

The Honorable Ricardo S. Martinez

Jody M. McCormick, WSBA # 26351
Steven J. Dixon, WSBA # 38101
WITHERSPOON · KELLEY
422 West Riverside Avenue, Suite 1100
Spokane, WA 99201-0300
Telephone: (509) 624-5265
Facsimile: (509) 458-2728
jmm@witherspoonkelley.com
sjd@witherspoonkelley.com

*Attorneys for Defendants Bank of America,
N.A., The Bank of New York Mellon, fka
The Bank of New York, as Trustee for the
Certificateholders of the CWALT Inc.
Alternative Loan Trust 2006-29T1, Mortgage
Pass Through Certificates, Series 2006-29T1
(erroneously sued as "The Bank of New
York Mellons fka the Bank of New York as
Trustee for the Certificateholders of the
CWALT Inc Alternatives Loan Trust 2006-29T1,
Mortgage Pass Through Certificates Series
2006-29T1")*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SUSAN KRUSEE,

PLAINTIFF,

vs.

BANK OF AMERICA, N.A., THE BANK OF
NEW YORK MELLONS FKA THE BANK OF
NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF THE CWALT
INC ALTERNATIVES LOAN TRUST 2006-
29T1, MORTGAGE PASS THROUGH
CERTIFICATES SERIES 2006-29T1, AND
BISHOP WHITE MARSHALL AND WIEBEL,

DEFENDANTS.

Case No. 2:13-cv-00824

DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT

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Attorneys & Counselors

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Phone: 509.624.5265
Fax: 509.458.2728

Defendants Bank of America, N.A. (“BANA”), The Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of the CWALT Inc. Alternative Loan Trust 2006-29T1, Mortgage Pass Through Certificates, Series 2006-29T1 (erroneously sued as “The Bank of New York Mellons fka the Bank of New York as Trustee for the Certificateholders of the CWALT Inc Alternatives Loan Trust 2006-29T1, Mortgage Pass Through Certificates Series 2006-29T1”) (“BNYM”) (collectively “Defendants”) hereby answer the Complaint of Plaintiff Susan Krusee (“Plaintiff”). Unless expressly admitted herein, Defendants lack sufficient information or knowledge to admit or deny the allegations of the Complaint and, on that basis, deny the allegations.

I. PARTIES

1. Answering Paragraph 1 of the Complaint, Defendants lack sufficient information to admit or deny the allegations contained therein, and on that basis, deny the allegations.

2. Answering Paragraph 2 of the Complaint, Defendants admit that BNYM possesses a beneficial interest in the Note secured by the subject property. Unless expressly admitted, Defendants lack sufficient information or knowledge to admit or deny the allegations of this Paragraph and, on that basis, deny the allegations.

3. Answering Paragraph 3 of the Complaint, Defendants admit that BANA is the servicer of Plaintiff’s mortgage loan which is the subject of this action. Unless expressly admitted, Defendants lack sufficient information or knowledge to admit or deny the allegations of this Paragraph and, on that basis, deny the allegations.

4. Answering Paragraph 4 of the Complaint, Defendants lack sufficient information to admit or deny the allegations contained therein, and on that basis, deny the allegations.

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II. JURISDICTION

5. Answering Paragraph 5 of the Complaint, the allegations contain statements of jurisdiction to which no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations contained therein, and on that basis, deny the allegations.

III. FACTS

6. Answering Paragraph 6 of the Complaint, Defendants admit that Plaintiff obtained a loan from Countrywide Home Loans, Inc. on August 15, 2006 secured by a Deed of Trust ("DOT") on the real property located at 6420 69th Ave SE, Snohomish, WA 98290-6060. To the extent Paragraph 6 refers to a document in writing, the DOT, that writing speaks for itself and the writing is the best evidence of what is contained therein. To the extent the allegations contained in Paragraph 6 contradict the writing, they are denied. As to the remaining allegations, Defendants lack sufficient information to admit or deny the allegations contained therein, and on that basis, deny the allegations.

7. Answering Paragraph 7 of the Complaint, Defendants admit that the loan was serviced by Countrywide Home Loans, Inc. and then later serviced by Defendant BANA. Unless expressly admitted, Defendants lack sufficient information or knowledge to admit or deny the allegations of this Paragraph and, on that basis, deny the allegations.

8. Answering Paragraph 8 of the Complaint, to the extent Paragraph 8 refers to a document in writing, the DOT, that writing speaks for itself and the writing is the best evidence of what is contained therein. To the extent the allegations contained in Paragraph 8 contradict the writing, they are denied. As to the remaining allegations, Defendants lack sufficient

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1 information to admit or deny the allegations contained therein, and on that basis, deny the
2 allegations.

3 9. Answering Paragraph 9 of the Complaint, to the extent Paragraph 9 refers to a
4 document in writing, the DOT, that writing speaks for itself and the writing is the best evidence
5 of what is contained therein. To the extent the allegations contained in Paragraph 9 contradict
6 the writing, they are denied. As to the remaining allegations, Defendants lack sufficient
7 information to admit or deny the allegations contained therein, and on that basis, deny the
8 allegations.
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10 10. Answering Paragraph 10 of the Complaint, Defendants admit that an Assignment
11 of DOT was recorded on April 10, 2012, transferring the beneficial interest in the DOT to
12 BNYM. To the extent Paragraph 10 refers to a document in writing, the Assignment of DOT,
13 that writing speaks for itself and the writing is the best evidence of what is contained therein.
14 To the extent the allegations contained in Paragraph 10 contradict the writing, they are denied.
15 As to the remaining allegations, Defendants lack sufficient information to admit or deny the
16 allegations contained therein, and on that basis, deny the allegations.
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19 11. Answering Paragraph 11 of the Complaint, Defendants lack sufficient
20 information to admit or deny the allegations contained therein, and on that basis, deny the
21 allegations.
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23 12. Answering Paragraph 12 of the Complaint, Defendants deny each and every
24 allegation of this paragraph.

25 13. Answering Paragraph 13 of the Complaint, Defendants deny each and every
26 allegation of this paragraph.
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1 14. Answering Paragraph 14 of the Complaint, to the extent Paragraph 14 refers to a
2 document in writing, the Assignment of DOT, that writing speaks for itself and the writing is
3 the best evidence of what is contained therein. To the extent the allegations contained in
4 Paragraph 14 contradict the writing, they are denied. As to the remaining allegations,
5 Defendants lack sufficient information to admit or deny the allegations contained therein, and
6 on that basis, deny the allegations.
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8 15. Answering Paragraph 15 of the Complaint, Defendants admit that a Notice of
9 Default was issued to Plaintiff and to the extent that this paragraph refers to that Notice of
10 Default, it is a document in writing which speaks for itself and is the best evidence of what is
11 contained therein. To the extent the allegations contained in Paragraph 15 contradict the writing,
12 they are denied. Defendants further admit that Plaintiff requested mediation under the
13 Washington Deed of Trust Act. Unless expressly admitted, Defendants lack sufficient
14 information or knowledge to admit or deny the allegations of this Paragraph and, on that basis,
15 deny the allegations.
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18 16. Answering Paragraph 16 of the Complaint, Defendants admit that Plaintiff
19 submitted documentation in conjunction with the requested mediation. Unless expressly
20 admitted, Defendants lack sufficient information or knowledge to admit or deny the allegations
21 of this Paragraph and, on that basis, deny the allegations.
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23 17. Answering Paragraph 17 of the Complaint, Defendants lack sufficient
24 information to admit or deny the allegations contained therein, and on that basis, deny the
25 allegations.
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1 18. Answering Paragraph 18 of the Complaint, Defendants lack sufficient
2 information to admit or deny the allegations contained therein, and on that basis, deny the
3 allegations.

4 19. Answering Paragraph 19 of the Complaint, Defendants lack sufficient
5 information to admit or deny the allegations contained therein, and on that basis, deny the
6 allegations.

7 20. Answering Paragraph 20 of the Complaint, Defendants lack sufficient
8 information to admit or deny the allegations contained therein, and on that basis, deny the
9 allegations.

10 21. Answering Paragraph 21 of the Complaint, Defendants lack sufficient
11 information to admit or deny the allegations contained therein, and on that basis, deny the
12 allegations.

13 22. Answering Paragraph 22 of the Complaint, Defendants admit that the mediation
14 occurred on March 15, 2013. Defendants deny any remaining allegations.

15 23. Answering Paragraph 23 of the Complaint, Defendants deny the allegations.
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19 **IV. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **BREACH OF DEED OF TRUST ACT**

22 24-28. Plaintiff's first cause of action for Breach of the Deed of Trust Act was
23 dismissed pursuant to the Court's Order on Motion to Dismiss, filed on July 30, 2013. As a
24 result, no response to this cause of action is required.
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SECOND CAUSE OF ACTION

BREACH OF DEED OF TRUST

29. Answering Paragraph 29 of the Complaint, Defendants incorporate by reference their answers to each and every preceding paragraph, as set forth in full herein.

30. Answering Paragraph 30 of the Complaint, Defendants deny each and every allegation contained therein.

31. Answering Paragraph 31 of the Complaint, Defendants deny each and every allegation contained therein.

32. Answering Paragraph 32 of the Complaint, Defendants deny each and every allegation contained therein.

33. Answering Paragraph 33 of the Complaint, Defendants deny each and every allegation contained therein.

34. Answering Paragraph 34 of the Complaint, Defendants deny each and every allegation contained therein.

35. Answering Paragraph 35 of the Complaint, Defendants deny each and every allegation contained therein.

36. Answering Paragraph 36 of the Complaint, Defendants deny each and every allegation contained therein.

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THIRD CAUSE OF ACTION

BREACH OF CONTRACT

37-40. Plaintiff's third cause of action for Breach of Contract was dismissed pursuant to the Court's Order on Motion to Dismiss, filed on July 30, 2013. As a result, no response to this cause of action is required.

FOURTH CAUSE OF ACTION

CONSUMER PROTECTION ACT

31-34. Plaintiff's fourth cause of action for violation of Washington's Consumer Protection Act was dismissed pursuant to the Court's Order on Motion to Dismiss, filed on July 30, 2013.¹ As a result, no response to this cause of action is required.

FIFTH CAUSE OF ACTION

INJUNCTION

31. Answering Paragraph 31 of the Complaint, Defendants incorporate by reference their answers to each and every preceding paragraph, as set forth in full herein.²

32. Answering Paragraph 32 of the Complaint, Defendants deny each and every allegation contained therein and further deny that Plaintiff is entitled to the relief sought therein.

V. PRAYER FOR RELIEF

1) Answer Paragraph 1 of the Prayer for Relief, Defendants deny that Plaintiff is entitled to the relief sought.

¹ Plaintiff's fourth cause of action is mis-numbered 31-34.

² Plaintiff's fifth cause of action is mis-numbered 31-32.



2) Answer Paragraph 2 of the Prayer for Relief, Defendants deny that Plaintiff is entitled to the relief sought.

3) Answer Paragraph 3 of the Prayer for Relief, Defendants deny that Plaintiff is entitled to the relief sought.

4) Answer Paragraph 4 of the Prayer for Relief, Defendants deny that Plaintiff is entitled to the relief sought.

VI. AFFIRMATIVE DEFENSES

In further answer to Plaintiff's Complaint, and by way of affirmative defenses, Defendants allege as follows:

1. Plaintiff failed to commence this action within the time required by the applicable statute of limitations.

2. Plaintiff's causes of action are barred by the doctrine of laches.

3. Plaintiff's claims are barred by the equitable doctrine of unclean hands.

4. If Plaintiff suffered or sustained any loss, injury, damage or detriment, the same was directly and proximately caused and contributed to by the breach, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiff, and not by Defendants.

5. The breach, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of third parties directly and proximately caused and contributed to any loss, injury, damage or detriment Plaintiff sustained.

6. The Complaint and each cause of action therein are barred because Defendants did not ratify any alleged misconduct on the part of third parties.

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1 7. Plaintiff acquiesced in, consented to and/or ratified the acts and omissions
2 alleged in the Complaint.

3 8. Without admitting any of the allegations in the Complaint, Defendants allege that
4 the injuries and/or damages alleged by Plaintiff were proximately caused by, occurred, and/or
5 were contributed to by Plaintiff's own acts or failures to act.

6 9. Some or all of Plaintiff's claims are preempted by the National Bank Act.

7 10. Defendants assert as an affirmative defense that Plaintiff's claims are barred
8 because Defendants' conduct was at all times undertaken in good faith.

9 11. Plaintiff's claims are barred, in whole or in part, by the failure to exercise
10 reasonable care to mitigate their alleged damages, if any.

11 12. Any alleged acts or omissions of Defendants giving rise to Plaintiff's claims, if
12 any, are the result of an innocent mistake and/or bona fide error notwithstanding reasonable
13 procedures implemented by Defendants to avoid any such acts or omissions. Defendants at all
14 times acted in a reasonable manner in connection with the transactions at issue in this action.

15 13. Defendants allege they did not owe Plaintiff any duty of care.

16 14. Defendants assert as an affirmative defense that Plaintiff's claims are barred
17 because Plaintiff does not have standing to pursue the claims.

18 15. Plaintiff has suffered no actual damages or speculative damages and is not
19 entitled to recovery from Defendants.

20 16. Plaintiff's Complaint fails to state facts sufficient to constitute any cause of
21 action against Defendants.

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1 17. Defendants were justified and privileged in taking the actions alleged in the
2 Complaint.

3 18. To the extent not set forth herein, Defendants reserve the right to assert
4 additional defenses that become available or apparent during discovery and to amend their
5 Answer accordingly.
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Defendants pray:

- 9 1. That Plaintiff take nothing by way of her Complaint;
10 2. That Defendants be awarded their costs of suit incurred herein;
11 3. That Defendants be awarded their attorneys' fees to the extent provided by law;
12 4. That judgment be entered in favor of Defendants; and
13 5. That Defendants be granted such other relief as the Court deems just and proper.
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 **WITHERSPOON • KELLEY**
Attorneys & Counselors

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Spokane, Washington 99201-0300 Fax: 509.458.2728

Respectfully submitted this 12th day of August, 2013.

WITHERSPOON KELLEY

By: s/Jody M. McCormick

Jody M. McCormick, WSBA # 26351

jmm@witherspoonkelley.com

Steven J. Dixson, WSBA #38101

sjd@witherspoonkelley.com

Witherspoon Kelley

422 West Riverside, Suite 1100

Spokane, WA 99201-0300

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Facsimile: 509.458.2728

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2013,

1. I caused to be electronically filed the foregoing DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO AMEND with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

- **Jason E Anderson**
jellisandersonecf@gmail.com,jason@jasonandersonlaw.com
- **Katherine A Christofilis**
kchristofilis@bwmlegal.com,lberkseth@bwmlegal.com

2. I hereby certify that I have mailed by United States Postal Service the foregoing to the following non-CM/ECF participants at the addresses listed below: **None.**

3. I hereby certify that I have mailed by United States Postal Service the document to the following CM/ECF participants at the address listed below: **None.**

4. I hereby certify that I have hand-delivered the document to the following participants at the addresses listed below: **None.**

s/Jody M. McCormick
Jody M. McCormick WSBA # 26351
Steven J. Dixon, WSBA # 38101
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Spokane, WA 99201-0300
Phone: 509-624-5265
Fax: 509-458-2717
jmm@witherspoonkelley.com
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